

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	File No. EB-01-MA-040
New Image Electronics	)	
Miami, Florida	)	NAL/Acct. No. 200232700003
	)	
	)	FRN 0006-3343-12
	)	

**FORFEITURE ORDER**

**Adopted: February 26, 2002**

**Released: March 1, 2002**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000), to New Image Electronics ("NIE"), for willful violation of Section 302(b) of the Communications Act of 1934, as amended ("Act"),<sup>1</sup> and Section 2.803(a)(1) of the Commission's Rules ("Rules").<sup>2</sup> The noted violation involves NIE's marketing of non-compliant long-range cordless telephones.

2. On October 29, 2001, the District Director of the Commission's Tampa, Florida Field Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL"),<sup>3</sup> on behalf of the Commission's Miami, Florida Resident Agent Office ("Miami Office"), in the amount of seven thousand dollars (\$7,000). NIE filed a response on January 14, 2002.

**II. BACKGROUND**

3. In February of 2001, the Federal Aviation Administration ("FAA") reported to the Enforcement Bureau that it was receiving sporadic interference to an aviation frequency in the Miami, Florida area. In March of 2001, the Miami Office identified the source of the interference as a long-range

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<sup>1</sup> 47 U.S.C. § 302(b).

<sup>2</sup> 47 C.F.R. § 2.803(a)(1).

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232700003 (Enf. Bur., Miami Office, released October 29, 2001).

cordless telephone being operated from an electronics store in Miami. Information subsequently obtained by the Enforcement Bureau indicated that some long-range cordless telephones were being marketed for use on civilian VHF aviation frequencies in a number of states. The FAA provided technical measurements of some of the long-range cordless telephones and indicated that some of the units transmitted significant spurious signals on aviation frequencies, while other units were purposely designed to operate in the aviation band. As a result of the FAA's concerns, the Enforcement Bureau launched a nationwide investigation into the unlawful use of long-range cordless telephones that has resulted in the issuance of several citations and NALs. The cordless telephone purchased by the FCC agents from NIE is the same type of unlawful long-range cordless telephone that caused concern for the FAA. This long-range cordless telephone had the potential to cause serious interference to aviation and, thus, is a threat to public safety.

4. On July 27, 2001, agents from the Miami Office visited NIE, a retail store located at 9 West Flagler Street, Miami, Florida 33130. The agents inquired about the availability of long-range, cordless telephones for purchase. The salesperson offered several models for sale, including a Prolink, CT 600. The long-range cordless telephones offered for sale did not possess the FCC authorization required for marketing these devices in the United States. On August 24, 2001, the Miami Office issued a citation to NIE for violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules which prohibits the marketing of such devices. On September 10, 2001, NIE responded to the citation. In its response, NIE stated that the offending cordless telephones were no longer in the store.

5. On September 27, 2001, two FCC agents returned to NIE and again inquired about the availability of long-range cordless telephones for purchase. The salesperson sold the agents a Prolink, CT 600. The cordless telephone purchased by the agents did not possess the labeling or FCC authorization required for marketing the device in the United States.<sup>4</sup> On October 29, 2001, the District Director of the Commission's Tampa, Florida Field Office issued a *NAL* to NIE for marketing a non-compliant high-power cordless telephone in violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. On January 14, 2002, the Bureau received a response to the *NAL*. In its response, NIE does not dispute the violations. However, NIE requests cancellation or reduction of the forfeiture for other reasons. Specifically, NIE asserts that because of a misunderstanding between it and its former counsel, NIE believed that it was permitted to continue selling the long-range cordless telephones as long as they were sold for export only. NIE further contends that it mistakenly believed it was selling the long-range cordless telephone for export when the Commission agent gave his address as "Puerto Rico." NIE also contends that it has removed all of the offending items from its store, has obtained a credit from its wholesaler for the return of those items, and is cooperating with the Enforcement Bureau in this matter. Alternatively, NIE claims that it would be an extreme financial hardship for it to pay the forfeiture proposed in light of its small profit margin over the last three years.

### III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission's*

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<sup>4</sup> See e.g., 47 C.F.R. §§ 15.201, 2.925, and 15.19.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

*Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining NIE's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup>

7. Section 302(b) of the Act provides that no person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section. Section 2.803(a)(1) of the Rules provides that:

(a) Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless: (1) [i]n the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter[.]

NIE contends that, after consulting with its prior attorney, it believed that it was permitted to continue selling the long-range cordless telephones as long as they were sold for export only. NIE also contends that it sold the cordless telephone to the FCC agent thinking that it was being sold for export, because the agent told the salesperson that his address was in Puerto Rico and the salesperson mistakenly believed for export purposes, that Puerto Rico was outside the United States. Section 2.807(b) of the Rules<sup>8</sup> exempts devices "manufactured solely for export" from the prohibition of Section 2.803(a)(1) which prohibits the marketing of non-compliant devices. However, the exemption only applies to devices that the *manufacturer* actually exports (emphasis added). NIE was not the manufacturer of the device at issue here. As a retailer, NIE is not entitled to use this exemption. In any event, the fact that NIE was selling the long-range cordless telephones in a retail store in Miami, Florida indicates that NIE was engaged in marketing the long-range cordless telephones to the general public in the United States.<sup>9</sup> Moreover, even though NIE alleges that there was a misunderstanding between it and its former counsel, reliance upon advice of counsel is "grounds for neither rescission nor mitigation of a forfeiture penalty."<sup>10</sup> Additionally, NIE's statement to this effect is inconsistent with the information NIE initially provided the Bureau in response to the citation issued to NIE on August 24, 2001. In its response of September 10, 2001, NIE informed the Bureau that the cordless telephones were no longer in the store. If the cordless telephones were no longer in the store, they could not possibly be sold for export or otherwise. Further, even if export by NIE was permitted, Puerto Rico is not considered to be outside of the United States for the purpose of export.

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<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> 47 C.F.R. § 2.807(b).

<sup>9</sup> See *Amertel Electronics Corp.*, 8 FCC Rcd 4462, 4462 (Field Operations Bureau 1993).

<sup>10</sup> See *Virginia RSA 6 Cellular Limited Partnership*, 7 FCC Rcd 8022, 8022 (1992).

8. Finally, NIE asserts that because it has removed the long-range cordless telephones from the store, has obtained a credit from its wholesaler for the return of the phones and is cooperating with the Enforcement Bureau, the forfeiture should be cancelled or reduced. We disagree. Corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>11</sup>

9. Alternatively, NIE asserts that it would be an extreme financial hardship for NIE to pay the forfeiture imposed in light of the small profit margin it has experienced over the last three years. In support of its claim of financial hardship, NIE has submitted its federal income tax returns for tax years 1998, 1999, and 2000. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>12</sup> After reviewing the financial data submitted, we find no evidence in NIE's response that would support cancellation of the forfeiture or a reduction based upon financial hardship.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>13</sup> New Image Electronics, Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of seven thousand dollars (\$7,000) for violating Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>14</sup> Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 20023700003, and FRN 0006-3343-12. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>15</sup>

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<sup>11</sup> See *Seawest Yacht Brokers DBA San Juan Marina Friday Harbor, Washington*, 9 FCC Rcd 6099, 6099 (1994).

<sup>12</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

<sup>13</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>14</sup> 47 U.S.C. § 504(a).

<sup>15</sup> See 47 C.F.R. § 1.1914.

12. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to New Image Electronics, Inc. at 9 West Flagler Street, Miami, Florida 33130 and to its counsel Gary S. Glasser, Esq. at Biscayne Building, Suite 1400, 19 West Flagler Street, Miami, Florida 33130.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau